



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SEP 17 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Judith L. Corley, Esq.
Perkins Coie LLP
607 Fourteenth Street, NW
Suite 800
Washington, DC 20005-2011

RE: MUR 5031 (Friends of Lane Evans)

Dear Ms. Corley:

On June 22, 2000, the Federal Election Commission ("the Commission") notified your clients, the Friends of Lane Evans Committee (the "Committee") and Samuel M. Gilman, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to them at that time.

Upon further review of the allegations contained in the complaint, the Commission, on August 27, 2002, found that there is reason to believe that your clients, the Committee and Samuel M. Gilman, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

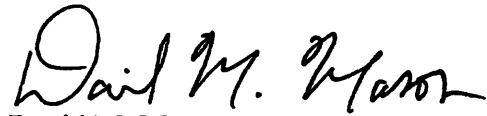
If you are interested in expediting the resolution of this matter by pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Brant Levine, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Mason". The signature is fluid and cursive, with the first name "David" being the most prominent.

David M. Mason
Chairman

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

Respondents:

Friends of Lane Evans Committee and
Samuel M. Gilman, as treasurer

MUR: 5031

I. GENERATION OF MATTER

This matter originated with a complaint dated June 12, 2000 that was filed by the Rock Island County Republican Central Committee, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Friends of Lane Evans Committee and Samuel M. Gilman, as treasurer, ("the Evans Committee") in connection with certain activities undertaken in 1998. An amendment to the complaint was filed on September 18, 2000, alleging similar violations in 2000.

II. THE LAW

A. Independent Expenditures

Pursuant to 11 C.F.R. § 100.8(a)(3), an independent expenditure is an "expenditure" for purposes of the Act and regulations; therefore, such expenditures count toward the threshold for political committee status. An "independent expenditure" is an expenditure made by a person that "expressly advocate[s] the election or defeat of a clearly identified candidate" but is made "without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. § 431(17) and 11 C.F.R. § 100.16. There are no limitations on independent expenditures; however, those in excess of \$200 within a calendar year that are made by political committees other than authorized committees must be reported pursuant to 2 U.S.C. § 434(b)(6)(B)(iii).

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B. Contribution and Expenditure Limitations

2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(2)(C) respectively limit to \$5,000 the amount that any "person" or any multi-candidate committee may contribute in a single calendar year to a political party committee that is not a national party committee. 2 U.S.C. § 441a(a)(2)(A) limits to \$5,000 the amount that a multi-candidate committee may contribute to a candidate committee per election. "Person" is defined at 2 U.S.C. § 431(11) as including "an individual, partnership, committee, association . . . or any other organization or group of persons."

2 U.S.C. § 441a(d)(1) permits "the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, [to] make expenditures in connection with the general election campaign of candidates for Federal office, subject to [certain] limitations" This provision permitting additional but limited expenditures by state and local party committees on behalf of their candidates, over and above their \$5,000 contribution limit, does not depend upon the affiliation of the various party committees; rather, the statute provides "one spending limit for the entire State party organization: State, county, district, city, auxiliary, or other party political committee." Advisory Opinion 1978-9.

State party committees are responsible for ensuring that the coordinated expenditures of all committees within the state and local party organization remain within the Section 441a(d) limitations. 11 C.F.R. § 110.7(c). State parties may assign their Section 441a(d) expenditure limitations to a national party committee. Democratic Senatorial Campaign Committee v. FEC, 660 F. 2d 773 (D.C. Cir. 1980), rev'd 454 U.S. 27 (1981), on remand, 673 F.2d 4551 (1982).

Only expenditures that are "coordinated" between a party committee and a candidate are subject to the Section 441a(d) limitations. Coordinated expenditures are expenditures made by

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any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his or her authorized political committees, or their agents. 2 U.S.C.

§ 441a(a)(7)(B)(i). Political parties can also make expenditures independently of candidates that are not subject to the limitations of 2 U.S.C. § 441a(d). See Colorado Republicans v. Federal Election Commission, 518 U.S. 604, 614-616 (1996) (“Colorado Republicans I”).¹ Once

coordinated party expenditures exceed the limitations of Section 441a(d), they become in-kind contributions to the candidate with whose committee they are coordinated. Committees that accept or receive contributions in excess of the limitations, or that use excessive contributions to make contributions or expenditures, violate 2 U.S.C. § 441a(f).

C. Generic Party Activity

State and local party committees may undertake generic voter drive activity, including voter identification, voter registration and get-out-the-vote activities directed toward the general public and in support of candidates of a particular party or campaigning on a particular issue, without having to allocate these expenditures to such candidates, provided that no specific candidate is mentioned. 11 C.F.R. § 106.5(a)(2)(iv). Expenditures for such activities must, however, be reported as “Administrative/ Voter Drive” activity and, as discussed below, must be allocated between the committee’s federal and nonfederal accounts. 11 C.F.R. § 104.10(b).

D. Exempt Party Activity

11 C.F.R. § 100.7(b)(3) & (8) permit the provision of uncompensated personal services to

¹ In FEC v Colorado Republican Federal Campaign Committee, 533 U.S. 431 (2001) (“Colorado Republicans II”), the Supreme Court upheld the constitutionality of the coordinated party expenditure limits set forth at Section 441a(d)

a party committee by volunteers and the unreimbursed payment by volunteers of their own living expenses, without such services or payments becoming contributions. The party organization may pay for the travel and subsistence of the volunteers without taking away their volunteer status. 11 C.F.R. § 100.7(b)(15)(iv). Such payments for travel and subsistence must be reported, but do not need to be allocated to specific candidates. 11 C.F.R. §§ 100.7(b)(15)(v), 100.8(b)(16)(v), and 104.10(b).

2 U.S.C. §§ 431(8)(B)(x) and (9)(B)(viii) and 11 C.F.R. §§ 100.7(b)(15) and 100.8(b)(16) exempt from the definitions of "contribution" and "expenditure" payments by state or local party committees "of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters and yard signs) used by such committees in connection with volunteer activities on behalf of any nominee(s) of such party," so long as such materials are not used in general public communications or political advertising such as broadcasting or direct mail.² The materials must be distributed by volunteers, not by commercial or for-profit entities. 11 C.F.R. § 100.8(b)(16)(iv). Materials furnished by a national party committee or bought with national party funds are not eligible for the exemption. 11 C.F.R. § 100.8(b)(16)(vii).

The federal portions of the payments for these materials must come from contributions that are "subject to the limitations and prohibitions" of the Act and must not be made "from contributions designated by the donor to be spent on behalf of a particular candidate or particular candidates for Federal office." 11 C.F.R. § 100.8(b)(16)(i), (ii), and (iii).

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Because activity falling within the so-called "volunteer exemption" does not result in contributions or expenditures, neither express advocacy, nor other language in the communications supporting a candidate's election or defeat, nor coordination of such activity by a state party with the candidate(s) benefited becomes an issue. While such expenditures must be reported as disbursements, as required by 11 C.F.R. § 104.3, they need not be allocated to particular candidates. 11 C.F.R. § 100.8(b)(16)(v).

E. Allocation of Expenditures

Pursuant to 11 C.F.R. § 106.1(a)(1), any expenditure made on behalf of more than one clearly identified candidate must be "attributed to each such candidate according to the benefit reasonably expected to be derived." Expenditures for generic party activity and for party activities exempt from the definition of "contribution" must be allocated between the party committee's federal and nonfederal accounts according to the ballot composition methods set out at 11 C.F.R. § 106.5(d)(i) and (ii). 11 C.F.R. § 106.5. Payments for party communications used by volunteers as part of exempt party activity must be allocated between federal and nonfederal activity using the time or space methods set out at 11 C.F.R. § 106.5(e). More generally, expenditures for publication or broadcast communications are allocable based upon the proportion of space or time devoted to a particular candidate. 11 C.F.R. § 106.1(a)(1).

Party committees that finance activities with regard to both federal and nonfederal elections must either establish a separate federal account into which are to be deposited only

² "Direct mail" is defined at 11 C.F.R. § 100.8(b)(16)(i) as "any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists", lists obtained from public offices are not considered commercial lists. Explanation and Justification, 45 Fed. Reg. 15081, (March 7, 1980).

contributions that are neither prohibited nor in excess of the statutory limitations, or, in the alternative, must establish a separate committee for purposes of its federal activities. 11 C.F.R. § 102.5. Contributions, expenditures and transfers made in connection with a federal election by any committee with separate federal and nonfederal accounts must be made solely from the federal account, and no funds may be transferred into that account from a nonfederal account except as provided by 11 C.F.R. §§ 106.5 and 106.6. 11 C.F.R. § 102.5(a)(1)(i).

F. Prohibited Contributions

2 U.S.C. § 441b prohibits the making of contributions and expenditures by corporations, banks and labor organizations in connection with federal elections, and the receipt of such contributions by federal candidates and political committees. Committees also violate this provision by using prohibited contributions to make expenditures in connection with federal elections.

As noted above, 11 C.F.R. § 102.5(a) requires political committees that finance both federal and nonfederal activities either to maintain separate federal and nonfederal accounts or make sure that no prohibited funds go into an account used for both purposes. 11 C.F.R. § 102.5(b), on the other hand, permits committees that are not political committees under the Act, and State and local party committees that undertake exempt activity, to either maintain a separate account into which only permissible funds are deposited or be able to demonstrate that there were sufficient permissible funds in an account to make federal contributions or expenditures.

G. Reporting of In-kind Contributions and Coordinated Party Expenditures

Political committees are required to report all expenditures aggregating in excess of \$200 in a calendar year, including in-kind contributions to candidates, pursuant to 2 U.S.C.

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§ 434(b)(5)(A). Party committees are also required to report all coordinated party expenditures, pursuant to 2 U.S.C. § 434(b)(4)(H)(iv) and (6)(B)(iv). State party committees are responsible for either filing consolidated reports of their own and subordinate party committees' coordinated expenditures or for finding another approved method of controlling these expenditures.

11 C.F.R. § 100.7(c).

III. FACTUAL AND LEGAL ANALYSIS

A. Coordinated Party Expenditures by the Rock Island County Democratic Central Committee

The complaint alleges that the Evans Committee accepted excessive contributions from the Rock Island County Democratic Central Committee ("the Rock Island Committee") in the form of coordinated party expenditures. In 1998, the Democratic Party of Illinois and its county and other subordinate committees could together have made \$32,550 in Section 441a(d) coordinated expenditures on behalf of a candidate for the House of Representatives in the general election in Illinois. See 2 U.S.C. § 441a(d). Additionally, one of the Democratic national party committees could have made an additional \$32,550 in coordinated expenditures on behalf of each Democratic House candidate. *Id.*

In addition to coordinated expenditures, the State Party, together with its local committees, and the national party could each have made a total of \$5,000 in direct contributions

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to that candidate for the general election.³ See 2 U.S.C. § 441a(a)(2)(A). Thus, the State Party together with its subsidiary committees and the national party each could have made \$5,000 in contributions to the Evans Committee as well as \$32,550 in coordinated expenditures on behalf of the Evans campaign. The national party could have made additional expenditures within any limitations assigned to it by the State Party, although the State Party's own limitation would have been diminished by the amount of the assignment used. 2 U.S.C. § 441a(d).

In 1998, the State Party reported no Section 441a(d) expenditures on behalf of Lane Evans by itself or by any subordinate committee. Reports filed by the Democratic Congressional Committee ("DCCC") in 1998 itemized on its Schedule F submissions show \$46,434 in Section 441a(d) expenditures for "Mail Services" and "In-House Media Services" on behalf of Lane Evans. Each such schedule bore at the top of the statement: "THIS COMMITTEE HAS BEEN DESIGNATED TO MAKE COORDINATED EXPENDITURES BY THE DEMOCRATIC NATIONAL COMMITTEE OR THE STATE DEMOCRATIC PARTY." Given that the DCCC's reported Section 441a(d) expenditures exceed the national party's limit, it appears that the State Party also assigned at least \$13,884 of its expenditure authority to the DCCC (\$46,434 - 32,550 = \$13,884).

The State Party's apparent assignment of a portion of its expenditure authority to the DCCC would have left the State Party with \$18,666 for its own and its subordinates' use. The

³ The Commission has concluded in several advisory opinions that, because all affiliated political committees share a single contribution limitation and may make unlimited transfers among themselves, a new political committee affiliated with a pre-existing multi-candidate committee takes on the latter's multi-candidate status. Advisory Opinions 1990-16, 1986-42, 1983-19, 1980-40. Thus, in the present matter, affiliation of the Rock Island Committee with the Democratic Party of Illinois, a multi-candidate committee, would have conferred multi-candidate status upon the Rock Island Committee, permitting the latter and any affiliated committees to make a total of \$5,000 in contributions to the general election campaign of Lane Evans.

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addition of the \$5,000 in contribution authority would have brought to \$23,666 the amount that the State Party and its subordinate local party committees could have expended on behalf of the Evans campaign.

The Rock Island Committee appears to have made a number of expenditures designed to support Lane Evans' candidacy in 1998. These expenditures were used for mailers, radio advertisements, and a \$1,000 contribution to the Evans Committee.⁴ For example, attached to the complaint were two mailers apparently sent out in 1998 by the Rock Island Committee. According to the complaint, one mailer was delivered on October 19, and the second on October 26, 1998. Both mailers refer to Tuesday, November 3, and include the phrase, "Vote for Congressman Lane Evans And The Entire Democratic Ticket." The disclaimer on each of the two mailers read: "Paid For By Rock Island County GOTV Committee," an account of the Rock Island Committee.

The complaint also discusses a radio advertisement that allegedly was paid for by the Rock Island Committee and that urges people to vote for Lane Evans. The complaint did not provide a script for these radio advertisements, but stated that "Congressman Lane Evans was the only candidate mentioned by name in the radio commercial," that "[t]he script commented on his character, qualifications and accomplishments," and that the last lines of the advertisement "said, 'Lane Evans has always stood by us. Now it's time to stand by Lane Evans. On November 3rd, Vote for the entire Democratic ticket.'"⁵ Complaint at pages 10-11.

⁴ The Rock Island Committee's state report itemized the contribution to the Evans Committee as "GOTV Assistance." The Evans Committee reported receiving the \$1,000 as a contribution.

⁵ As will be discussed below, it appears that the Knox County Democratic Central Committee placed the same advertisement on local stations.

Generic party activities, as well as certain exempt party activities, do not constitute expenditures under the Act. *See* 11 C.F.R. §§ 106.5(a)(2)(iv) and 100.7(b)(16). Nonetheless, neither the mailers nor the radio advertisement appear to qualify for these exemptions. First, the communications specifically refer to candidate Evans and thus do not qualify as generic party activity. *See* 11 C.F.R. § 106.5(a)(2)(iv). Second, the mailers were apparently distributed by a commercial vendor, not as part of volunteer activities, and are thus ineligible to be treated as exempt volunteer activity, as are radio advertisements. *See* 11 C.F.R. § 100.7(b)(16). The Rock Island Committee has acknowledged that the communications may have constituted federal expenditures:

The Committee did not intend to become a federal political committee, and believed that its activities were within the range to avoid any such requirement. We are now aware that some of the activities may not have been permissible exempt activity . . ."

(Emphasis added).

As the complaint notes, the Rock Island Committee's 1998 state report for the period of July through December shows several payments apparently related to the mailers and the radio advertisement. Although the exact dates of these expenditures are not always given (the timing for several was reported as "7-1-98 thru 12-31-98"), the seemingly relevant payments are summarized below.

Payee	Amount	Purpose
Review Printing	\$6,177.10	Printing and Mailing Expenses
Rock Island County Clerk	\$720.00	Voter Lists, Labels and Poll Lists
Quad-City Printers	\$1,790.00	Printing Mailers
Postmaster	\$13,764.30	Postage, Bulk Mailing, etc.

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Radio Station WSDR	\$624.00	Radio Advertising
Axelrod and Associates	\$12,001.44	Radio buy & production cost
TOTAL:	\$35,076.84	

In addition to expenses listed above, the Rock Island Committee's state report also itemized a \$4,930.44 in-kind contribution from J.V. Consulting Services. The complaint alleged that this in-kind contribution was made in connection with these mailings: "the bulk rate permit on both direct mail pieces . . . Permit #211, is registered to J.V. Consulting . . ." If this allegation in the complaint is correct, and because in-kind contributions are reportable by the recipient committee as expenditures, this \$4,930.44 paid by J.V. Consulting should be added to the Rock Island Committee's expenditures. *See* 11 C.F.R. § 104.13.

Both the mailers and the radio advertisements contain the exhortation to vote for Lane Evans and the Democratic ticket. Expenditures made on behalf of more than one clearly identified candidate must be attributed to candidates based on the space and time devoted to each candidate as compared to the total space and time devoted to all candidates.⁶ *See* 11 C.F.R. § 106.1(a)(1). The regulations do not specifically address allocating expenditures for communications that combine generic party support with express advocacy, as is the case here. Nonetheless, the Commission has approved of allocating such expenditures on a time-space basis to determine the benefit reasonably expected to be derived by the clearly identified candidate.

⁶ Absent Lane Evans being mentioned by name, each mailer would have constituted generic party activity which would have been subject to a ballot composition ratio of 20% federal/80% nonfederal because there were two federal candidates—one for the House of Representatives (Congressman Evans) and one for the U S Senate (Senator Carol Mosley Braun)—and eight nonfederal candidates on the ballot *See* 11 C F R § 106 5(d)

Applying the time-space ratio to each mailer and the radio advertisement, the Commission calculated that the Rock Island Committee made federal expenditures of at least \$30,782.40.⁷ Combined with its \$1,000 contribution to the Evans Committee, the Rock Island Committee appears to have made a minimum of \$31,782.40 in federal expenditures during the 1998 calendar year. Consequently, if these expenditures were coordinated with the Evans Committee, then the Evans Committee would have accepted an excessive contribution in violation of 2 U.S.C. § 441a(f).

The complaint alleges that the expenditures by the Rock Island Committee were in fact coordinated with the Evans Committee. To support this allegation, the complaint cited the picture on the second Rock Island Committee mailer as probably having been provided by the Evans Committee. Additionally, Lane Evans himself may have been personally involved with the mailers, as he is listed on the mailer as a member of the Rock Island GOTV Fund. The Evans Committee has not explicitly denied coordination with the Rock Island Committee, arguing instead that it understood the local party's activities to have been "exempt party" activities. The Rock Island Committee also does not deny coordination; in fact, it explicitly states that the Rock Island GOTV Fund was used to conduct "coordinated activities."⁸

The aforementioned facts suggest that the Rock Island Committee and the Evans Committee may have engaged in substantial communications about the creation and distribution

⁷ Specifically, the Commission applied a 50% federal ratio for the first mailer because it equally supported the party ticket and Lane Evans, 90% for the second mailer because it almost exclusively supported Lane Evans, and 92% for the radio advertisement because it also almost exclusively focused on Lane Evans and because less than 5 seconds (8% of the total amount of time) were likely spent urging listeners to vote for the entire party ticket

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of the mailers and radio advertisement and thus require further investigation to probe the extent of possible coordinated activities. Therefore, there is reason to believe that Friends of Lane Evans and Samuel M. Gilman, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions in the form of excessive coordinated party expenditures.⁹

B. Coordinated Party Expenditures by the 17th District Victory Fund

The complaint alleges that the Evans Committee also accepted excessive contributions from the 17th District Victory Fund ("the Victory Fund") in the form of coordinated party expenditures. The Victory Fund's name is derived from the Illinois 17th Congressional District, in which Lane Evans was a candidate and which encompasses Rock Island and Knox Counties. Expenditures made by state and local party committees pursuant to 2 U.S.C. § 441a(d) are subject to one limitation. 11 C.F.R. § 110.7(b)(1). Thus, as with the Rock Island Committee, it becomes necessary to examine whether there was sufficient interaction between the Evans campaign and the Victory Fund for the Victory Fund's expenditures to be deemed coordinated with the Evans Committee.

The Victory Fund has stated that it "has, for many years, conducted coordinated campaign efforts for Democratic candidates in this region – those efforts have consisted primarily of assisting in educating the public about Democratic Party issues and getting people out to vote on election day." The Evans Committee acknowledges in its response to the complaint that it met

⁸ If the expenditures were independent, the Rock Island Committee was required to report these as independent expenditures and certify that the expenditures were not made in coordination with the candidate, which it has not done. See 2 U.S.C. § 434(b)(4)(H)(iii).

⁹ Candidate committees are not required to report coordinated party expenditures made on their behalf. 11 C.F.R. § 104.3(a)(3)(iii), *Wertheimer v. Federal Election Commission*, 268 F.3d 1070, 1073 (D.C. Cir. 2001) ("A candidate is not . . . required to report as contributions coordinated expenditures by his political party")

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“periodically with the 17th District Victory Fund to discuss the coordinated campaign activities. The Evans Campaign understood that the activities to be undertaken as part of the coordinated campaign were exempt party activities under the federal campaign laws, or generic party activities benefiting the entire ticket.”

Although the Victory Fund has stated that it focused on GOTV activity designed to benefit the entire Democratic ticket, there are a number of bases for believing that the Victory Fund may have coordinated its expenditures with the Evans Committee. In addition to being named after Congressman Evans' congressional district, the Victory Fund maintained its headquarters in the same building and on the same floor as the headquarters of the Evans campaign. The complaint also alleges that “[t]he campaign manager for Friends of Lane Evans held organizational planning meetings every Sunday with the staff of the 17th District Victory Fund.” Additionally, neither the Victory Fund nor the Evans Committee disputed statements in the complaint and/or the press about volunteers from the Victory Fund taking part in activities that reportedly benefited the Evans campaign.

The complaint specifically alleges that the Evans Committee accepted excessive in-kind contributions from the Victory Fund in connection with activities sponsored through Strategic Consulting Group, Inc. (“Strategic Consulting”). According to the complaint, the Victory Fund made payments to Strategic Consulting, which then allegedly provided “volunteers” who worked on behalf of the Evans Committee. The complaint noted payments in 1998 and 2000 by the Victory Fund to Strategic Consulting that were allegedly used “for the living expenses and salaries of . . . workers.” The Commission identified \$100,000 in disbursements by the Victory Fund to Strategic Consulting in 1998 and an additional \$85,875 in 2000.

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The complaint cited a news article by Edward Folker entitled "Volunteers work for Evans but not for the Evans' campaign" that was published in the Moline, Illinois Dispatch on October 19, 1998. In this article, the reporter wrote that "at least 17 people from all over the country came into the 17th District to work for the 17th District Victory Fund." According to the same article, these individuals were part of what was termed a "campaign school."

Mr. Bertram [the head] described the school as a "Democratic party-building organization" that has relied on phone calling and door-to-door canvassing to reach some 60,000 voters since the group set up in eight area counties Aug. 1. They also have put up yard signs, marched in parades and offered a little public demonstration against Mr. [Mark] Baker [the Republican opponent of Mr. Evans] – most notably a picket line against his position on health care reform.

According to the same article, none of the "nine younger men" out of the twelve persons on this picket line "would acknowledge that they were working for Mr. Evans' re-election." Another news article not cited in the complaint, this one published in Campaigns and Elections, described the Victory Fund as "the most important non-candidate activity, besides party soft money," in the congressional race in that Illinois district in 1998. The article stated:

With a budget of roughly \$300,000 and 18 full-time volunteers (with no salaries but expenses paid), this 'campaign school' group mattered.¹⁰ The Victory Fund was financed by DNC soft money, labor unions, and other interested groups and individual contributions. Some of these contributors had 'maxed out' on direct contributions to the Evans campaign.

The training and setup were provided by Strategic Consulting Group, a Chicago-based consulting firm co-run by Bob Creamer, Citizen Action of Illinois activist and husband of Democratic congressional candidate (now

¹⁰ The source and composition of the \$300,000 figure is not given in the article. Presumably it covered, inter alia, the \$100,000 in payments to Strategic Consulting Group plus \$25,586 in reported telephone-related expenditures, \$15,300 in reported consulting fees, \$68,142 in voter list, postage and printing costs related to direct mail, GOTV and voter registration activities, and an undifferentiated amount of staff salaries. See further discussion below.

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congresswoman) Jan Schakowsky. The group's volunteers focused on phone calling and door-to-door canvassing to reach tens of thousands of voters, culminating in a GOTV effort on election day.

David Magleby and Marianne Holt, "The Long Shadow of Soft Money and Issue Advocacy Ads," Campaigns and Elections, May 1, 1999.¹¹

According to available information concerning the "campaign schools" run by Strategic Consulting, the recruitment and training of volunteers were, and still are, primary components of its services. Recruitment materials on the company's web site have stressed the benefits, especially career enhancement, to potential volunteers of the field experience to be attained through an assignment to a particular campaign.¹² Less emphasis has been placed upon the political benefits to the campaigns.

¹¹ A third article, this one published in 2000, described Strategic Consulting Group activities that year in the context of another congressional campaign in Nevada. According to the article, Strategic Consulting Group began supplying volunteers for political campaigns in 1998 in connection with the needs of the 1998 primary campaign of Congresswoman Schakowsky for GOTV volunteers. In the article, Mr. Creamer is quoted as saying that "we had to have a field operation that was second to none. To do that, we decided to recruit a cadre of people who wanted to learn a lot about careers in political organizing." According to the reporter, Strategic Consulting Group volunteers "don't get paid - except for out-of-pocket costs for food and gas - and they're expected to bring their own transportation." Jan Moller, "Group Organizes Volunteers," Las Vegas Review Journal, October 1, 2000.

¹² The Strategic Consulting Group's web site stated with regard to the "2001 Democratic Management School." "This is your invitation to apply to participate in one of the most unique and exciting training programs ever conducted for people who are serious about a career in progressive politics." <<http://www.stratcongroup.com/campaignschools.html>> (visited September 13, 2001). The web site went on to state

The first session of the Campaign School was held in Chicago during the winter of 1998. . . . Additional Campaign Schools have been held in more than 20 Congressional and Senate races and several local races throughout the country. Many participants have gone on to take important positions in Congressional, Senate and Legislative campaign, Congressional offices, and many other organizations."

Our Campaign Schools recruit young people from throughout the country who are interested in careers in political organizing. Participants receive training from some of the best political organizers in America while they develop field operations for political campaigns that mobilize thousands of volunteers and tens of thousands of voters. To put together the kind of field organization that effectively involves thousands of volunteers, campaigns need an infrastructure of motivated full-time organizers.

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The portion of the web site addressed to campaigns and candidates was more political. It began: "The Campaign School only considers campaigns for Democratic candidates. Campaigns must be well organized, adequately funded and committed to fully integrate Campaign School Participants into significant campaign roles." <http://www.stratcongroup.com/assign.html> (visited September 13, 2001). There was no indication in any of these 2001 website materials that participants pay any form of fee for the training they receive, nor was there any indication that they receive financial rewards beyond subsistence and reimbursement of travel costs.

The exact ways in which the volunteers supplied by Strategic Consulting to the Victory Fund were organized and supervised in 1998 and 2000 were not set out in the complaint or in the amendment. The complaint contained no indication that the volunteers were under the control of the Evans campaign, something the campaign itself has stated was not the case. Nonetheless, the complaint alleges that the Evans campaign in 1998 was fully aware of the Victory Fund's activities and credited those activities with helping reelect Mr. Evans. Lane Evans is quoted as having stated during a televised debate: "We've had the help of some students from across the

Campaign School participants provide that infrastructure SCG's Campaign Schools provide us with a powerful tool for campaign field operations They also provide us with a large, mobile pool of trained talent for use in electoral, issue and initiative campaigns

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The work will be intense – it will demand a total commitment.

In return, you will be trained by some of the best organizers in the country, given room and board, and out of pocket expenses You'll probably develop relationships during the program that will last a lifetime – both with professionals and with other participants. In addition, you will participate in a model campaign for a candidate you can believe in

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country come into this race. I'm very proud of them. They're part of the so-called campaign school."

The Victory Fund's disbursements to Strategic Consulting were originally reported as "consulting." Later, in its January 10, 2001 response to the Commission's Request for Additional Information dealing in part with the reported purposes of these expenditures, the treasurer of the Victory Fund wrote that the funds "were used specifically in recruiting volunteers for phone banks, door-to-door activities and get-out-the-vote activities throughout the 17th District."

The Victory Fund has addressed its 1998 volunteer activity by stating that it had hired Strategic Consulting "to train volunteer workers for the Committee [the Victory Fund]." The Victory Fund has also stated:

These volunteers then helped with the GOTV efforts of the Committee, including contacting voters, helping with the distribution of materials, putting up yard signs, door-to-door canvassing. The Committee did not pay these individuals, nor did Strategic Consulting. The volunteers did receive small stipends to cover their expenses. The Committee paid the consulting firm on an appropriate federal/nonfederal split for general GOTV activities and the activities undertaken did not have to be allocated to any candidate.

The response to the complaint filed on behalf of the Evans Committee stated that it understood that the Victory Fund hired Strategic Consulting to train volunteers for its coordinated campaign efforts. Further, the Evans Committee stated, "the individuals trained by the Strategic Consulting Group were not under the direction or control of the Evans Campaign."

The information presently available indicates that in 1998 Strategic Consulting served as a vendor performing functions related to GOTV programs for which it received compensation over and above the costs of meeting the basic needs of the volunteers it recruited and supervised. There is no indication on the Strategic Consulting website, nor in the complaint, that this

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company constituted an "issues group" or that it promoted a specific political agenda of its own in either 1998 or 2000.

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In order to determine whether the Victory Fund's expenditures to Strategic Consulting Group should have counted as a contribution to the Evans campaign, as alleged by the complainant, it must first be ascertained whether the provision of volunteers constituted either generic or exempt party activity. The complaint and the amendment to the complaint did not include copies of any materials used by the Victory Fund for the GOTV activities of the volunteers, either during their door-to-door visits or during their telephone conversations with potential voters. Therefore, it is not known whether the Victory Fund's volunteer-related hand-outs and telephone scripts contained solely generic language or cited specific candidates. Given the apparently close relationship between the Evans campaign and the Victory Fund with regard to the volunteer activity undertaken, it seems likely that at least some of the campaign materials distributed by the volunteers named Mr. Evans. Campaign materials that mention a specific candidate cannot qualify for the Act's exemption for generic voter drive costs. *See* 11 C.F.R. § 106.1(c)(2).

The Victory Fund has stated that it engaged in part in "exempt party activities," which presupposes candidate-specific activity. Local parties may spend unlimited amounts for exempt activities, including distributing campaign materials that support federal candidates. This exemption, however, is subject to a number of restrictions, including the following: first, the materials must be distributed by volunteers, not through public political advertising or through direct mail; second, the party committee must not use funds designated for a particular federal candidate; and third, the party must use permissible funds to pay costs allocable to federal candidates. 11 C.F.R. § 100.8(b)(16).

1 Volunteer Status

The Commission's regulations exempt from the definition of "contribution" both services provided by volunteers and the meeting by those volunteers of their own living expenses.

11 C.F.R. § 100.7(b)(3) & (8). The regulations also permit party organizations to pay for volunteers' travel and subsistence. 11 C.F.R. § 100.7(b)(15)(iv). According to the legislative history, the purpose of these regulations is "to encourage volunteers to work for and with local and State political party organizations." H.R. Rep. No. 422, 96th Cong., 1st Sess. (1979), contained in *Legislative History of the Federal Election Campaign Act Amendments of 1979*, Federal Election Commission, (1983) at 193. The regulations do not address a situation in which a party committee hires an outside vendor to recruit and train the volunteers who will be working for the committee in support of particular candidates.

In the absence of Commission regulations directly on point, questions arise as to whether the Victory Fund's hiring of Strategic Consulting to gather, train and apparently supervise a corps of volunteers somehow negated the volunteer status of the individuals involved, and therefore the application of the volunteer exemption to the Victory Fund expenditures for the activities in which Strategic Consulting was involved. These expenditures would have included costs related to the volunteers themselves and the costs of any materials distributed by the volunteers.

It can be argued that the recruitment and supervision of the volunteers through a vendor turned the Victory Fund's relationship with the volunteers into a commercial one, despite the absence of monetary compensation of the volunteers themselves, by placing the volunteers at a distance from the party committee. However, it can also be argued that paying a recruiter and coordinator of volunteers through a vendor would not be substantially different from paying committee personnel to perform the same functions, provided that the volunteers themselves

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continued to stay within a voluntary status, i.e., so long as the volunteers were not compensated beyond reimbursement for travel, room and board and "out-of-pocket" expenses.

Overall, the persons attending the campaign schools appear to have served as *bona-fide* volunteers, though it is unclear whom they were volunteering for. Although the Commission still has questions about the nature of the volunteers and the activities they performed, the use of volunteers trained and provided by a vendor does not appear to nullify the volunteer exception. An investigation is needed, however, to confirm that the services provided by Strategic Consulting were not materially different than if the Victory Fund trained and organized volunteers in-house.

2. Donor Intent

The second issue related to the application of the volunteer exemption involves donor intent. Payments made by a state or local committee of a political party for materials used in connection with volunteer activities do not constitute contributions or expenditures under the Act provided that they are made with funds that have not been designated by the donor for expenditures on behalf of a particular candidate. 11 C.F.R. § 100.8(b)(16)(iii). A contribution is deemed undesignated if the party committee "makes the final decision regarding which candidates are to be benefited by its expenditures." *Id.*

An examination of the federal reports filed by the Victory Fund and by the Evans Committee in 1998 reveals that nine federal PACs contributed to both the Victory Fund and the Evans Committee. Five of these committees, which appear to be connected to unions, contributed the maximum \$5,000 to both the Victory Fund and the Evans Committee. These contributions raise questions as to the intent of the donors, as the contributions to the Victory Fund came after contributions to the Evans Committee. The complaint cited the support of union

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organizations for the Victory Fund, but did not include information regarding the Victory Fund's solicitations of contributions. Thus, more information is needed to determine whether the political committees making the aforementioned donations directed that their contributions be used by the Victory Fund for the benefit of Lane Evans' campaign.

In addition to the pattern of contributions, there is further direct and circumstantial evidence in hand of a close relationship between the Victory Fund and the Evans campaign, which indicates that donors to the Victory Fund may have intended their contributions to be used to benefit Lane Evans. First, there is the Victory Fund's provision of volunteers through Strategic Consulting Group that benefited the Evans Committee. Second, the very name "17th District Victory Fund" indicates that the creation of this committee was the result of a focus upon Mr. Evans' reelection as the representative from that congressional district in Illinois. All of the cited media accounts discussing the volunteers supplied by the Victory Fund mentioned the Evans campaign by name, even though, given the committee's allocation formula, other campaigns also apparently were intended beneficiaries. Therefore, there are several additional bases for questioning the intent of contributors to the Victory Fund, and thus for an investigation into this issue.

3. *Funds Used*

Another of the prerequisites of the volunteer exemption for party committees is that the funds used for a federal activity, or federal portion of an activity, must be from permissible sources. 11 C.F.R. § 100.8(b)(16) Whether one federal candidate is benefited by volunteer activity or whether allocations between or among federal and nonfederal candidates are involved, all costs allocable to federal candidates must be paid with permissible funds. *Id.* Additionally, the local party may not use money transferred from the national committee to purchase campaign materials. *Id.*

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The complaint attached the Victory Fund's 1998 state disclosure report for its nonfederal account, which disclosed contributions from individuals that exceeded the \$5,000 per election limitation, \$121,945 from labor organizations, trade associations and political action committees, and a \$15,000 transfer from the Democratic National Committee ("DNC").¹³ Thus, the Victory Fund may have used impermissible funds for federal activity, especially considering it allocated payments to Strategic Consulting on a ballot composition basis, not on the time-space method. See 11 C.F.R. § 106.1(a)(1). Additionally, if the Victory Fund used the \$15,000 transfer from the DNC to pay for campaign materials, then any activity concerning those materials must be reported as a coordinated party expenditure, not as exempt activity. See 11 C.F.R. § 100.8(b)(16)(vii).

Overall, regardless of the questions raised by the Victory Fund's use of volunteers provided by Strategic Consulting Group, the available information indicates that the Victory Fund may have used impermissible funds for volunteer-related activities. Because it is likely that at least some of the campaign materials referred to Lane Evans, and because the Victory Fund may have used DNC funds to pay for the campaign materials, there is a sufficient basis to show that the Victory Fund may have coordinated its activities with the Evans Committee.

Coordinated expenditures made by local parties such as the Victory Fund share the same limit as for state parties. 2 U.S.C. § 441a(d). Thus, if the Victory Fund made coordinated expenditures on behalf of the Evans Committee, those expenditures would be added to the

¹³ The Victory Fund's federal reports showed a total of \$60,976 in receipts in 1998. The sources of federal income included \$10,447 from individuals, \$55 from a political party committee, and \$55,400 from other political committees, including political action committees.

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amount of coordinated expenditures by the State Party and any other subordinate local party committee, including the Rock Island Committee, for purposes of the limits set forth at 2 U.S.C. § 441a(d). As discussed in the previous section on the Rock Island Committee, the State Party and its subordinate parties already appear to have exceeded the \$32,550 limit in 1998. Therefore, any additional expenditures would increase the receipt of excessive coordinated party expenditures by the Evans Committee.

C. Coordinated Party Expenditures by the Knox County Democratic Central Committee

The complaint alleges that the Evans Committee accepted excessive contributions from the Knox County Democratic Central Committee ("the Knox County Committee") in the form of coordinated party expenditures. The complaint in this matter provided evidence that the Knox County Committee made an expenditure in 1998 for at least one radio advertisement that supported the candidacy of Lane Evans. It appears that this was the same advertisement as that placed by the Rock Island Committee during the same period. As noted above with reference to the Rock Island Committee advertisement, the complaint stated that Congressman Lane Evans was the only candidate mentioned by name in the commercial and that listeners were told that "[n]ow it's time to stand by Lane Evans." The advertisement ended with "On November 3rd, Vote for the entire Democratic ticket."

The Knox County Committee has stated:

Our understanding . . . was that the Committee could undertake certain general party get-out-the-vote activities for the candidates seeking election as Democrats, including activities that involved a Federal candidate, without incurring a registration and reporting obligation. Among the activities undertaken, the Committee has traditionally placed advertising in local newspapers and on local radio stations to encourage voters to go to the polls and to vote for Democratic party candidates. The advertisement cited by the Complaint was a part of the Committee's

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GOTV efforts during the 1998 election. As you can see from the amount in question (\$1,046), the effort was rather modest in scope.

The complaint attached documents that appear to reference the agreements between the Knox County Committee and the radio stations that ran the ads. One document states that it was submitted "on behalf of Demo. Central Com.," but cites the name "Lane Evans," on the line that begins: "The broadcast time will be used by ____." The three forms attached to the agreement also contain the name "Lane Evans" in the block headed "Announcement Name." Thus, the \$1,046 payment for the advertisement appears to have been made by the Knox County Committee in support of Lane Evans.

Generic party activity, as well as certain exempt party activity, does not constitute expenditures under the Act. 11 C.F.R. §§ 106.5(a)(2)(iv) and 100.7(b)(16). Nonetheless, as was discussed in the section on the Rock Island Committee, the radio advertisement cited by the complaint does not appear to qualify for either exemption. First, the advertisement specifically refers to Lane Evans, thus nullifying the exemption for generic party activity. *See* 11 C.F.R. § 106.5(a)(2)(iv). Second, public political advertising—such as through the radio—cannot qualify for exempt activity. *See* 11 C.F.R. § 100.7(b)(16). Indeed, the Knox County Committee has acknowledged that the costs of the advertisement constituted a federal expenditure, stating that although it believed the radio advertisement to be exempt GOTV activity, "We now understand that public political advertising cannot be a part of this exempt activity."

The report filed by the Knox County Committee with the Illinois State Board of Elections covering the period of July 1-December 31, 1998 itemized two payments to Galesburg Broadcasting Co., one of \$1,046 on October 22 and one of \$448 on November 3. Both were reported as being for "Broadcasting." The two agreement forms for political broadcasts that were

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attached to the complaint are related to Knox County Committee and show the same expenditure figures. Each is related to an advertisement placed with WAAG/WGIL.

The radio advertisement contains the exhortation to "stand by" Lane Evans and the Democratic ticket. Expenditures made on behalf of more than one clearly identified candidate must be attributed to candidates based on the space and time devoted to each candidate as compared to the total space and time devoted to all candidates.¹⁴ See 11 C.F.R. § 106.1(a)(1). The regulations do not specifically address allocating expenditures for communications that combine generic party support with express advocacy, as is the case here. Nonetheless, the Commission has approved of allocating such expenditures on a time-space basis to determine the benefit reasonably expected to be derived by the clearly identified candidate. Thus, as with the communications by the Rock Island Committee, the Commission applied the time-space ratio to the radio advertisement and calculated that the Knox County Committee appears to have made at least a \$962 federal expenditure.¹⁵

The complaint provided information that expenditures for the radio advertisement by the Knox County Committee—which urged listeners to "Stand by Lane Evans"—were coordinated

¹⁴ Lane Evans is the only clearly identified candidate that the radio advertisement supported. Absent Lane Evans being mentioned by name, the advertisement would have constituted generic party activity, which would have been subject to a ballot composition ratio of 20% federal/80% nonfederal. See 11 C.F.R. § 106.5(d).

¹⁵ Specifically, the Commission applied 92% of the total cost of the radio advertisement as a federal expenditure because the advertisement focused almost exclusively on Lane Evans and because less than 5 seconds (or 8% of the entire time) were likely spent urging listeners to vote for the entire party ticket.

The complaint also attached documents related to the Knox County Committee's \$448 payment to WAAG/WGIL. One agreement indicates submission "on behalf of Knox Co Dem Party", however, the line for "broadcast time will be used by" reads "Knox Co Demo Comm," not a candidate. In addition, at the top, on the line beginning "for the office of," the words "Democratic Ticket - Ride to Polls" are used and a handwritten note at the top reads "Conflicts w/all Republicans but not specific candidate." The text of the related advertisement is not in hand. Thus, not enough information is available to determine whether a portion of this payment constituted an expenditure or was generic GOTV activity.

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with the Evans campaign. The complaint attached the related NAB Agreement Form for Political Broadcasts, which appears to have been completed and signed by Kevin Gash on behalf of the Knox County Committee. As noted in the complaint, Mr. Gash also is shown on a report filed by the Evans Committee as the recipient of a salary payment. Therefore, the apparent involvement of an Evans Committee employee indicates that the Knox County Committee's payment for the radio advertisement may have been coordinated with Evans' campaign.

As discussed in previous sections, expenditures by the Rock Island Committee and the Victory Fund appear to have exceeded the coordinated party expenditure limit in 1998. Consequently, the Knox County Committee's coordinated party expenditures on behalf of Lane Evans of at least \$962 resulted in additional violations of the coordinated party expenditure limit. Therefore, the Evans Committee may have accepted additional excessive coordinated party expenditures in violation of 2 U.S.C. § 441a(f).

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